

FEDERAL CIRCUIT COURT OF AUSTRALIA

NGUYEN v MINISTER FOR IMMIGRATION & ANOR [2020] FCCA 614

Catchwords:

MIGRATION – Review of Administrative Appeals Tribunal decision – refusal of partner visas – relationship found to be not genuine – whether the Tribunal breached s.359A of the *Migration Act 1958* (Cth) or failed to make necessary findings considered.

Legislation:

Migration Act 1958 (Cth), ss.5F, 359A
Migration Regulations 1994 (Cth)

Cases cited:

Campos v Minister for Immigration [2019] FCA 1791
Minister for Immigration v Wu Shan Liang (1996) 185 CLR 259
He v Minister for Immigration (2007) 255 FCR 41
SZBYR v Minister for Immigration (2007) 235 ALR 609

Applicant:	VAN DUNG NGUYEN
First Respondent:	MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT SERVICES AND MULTICULTURAL AFFAIRS
Second Respondent:	ADMINISTRATIVE APPEALS TRIBUNAL
File Number:	SYG 2372 of 2018
Judgment of:	Judge Driver
Hearing date:	17 March 2020
Delivered at:	Sydney
Delivered on:	15 April 2020

REPRESENTATION

Counsel for the Applicant:	Mr L Karp
Solicitors for the Applicant:	Vinh Duong & Associates
Counsel for the Respondents:	Mr T Reilly
Solicitors for the Respondents:	Mills Oakley

ORDERS

- (1) The application filed on 27 August 2018 is dismissed.
- (2) The applicant is to pay the first respondent's costs and disbursements of and incidental to the application, fixed in the sum of \$5,400.
- (3)

FEDERAL CIRCUIT COURT

OF AUSTRALIA

AT SYDNEY

SYG 2372 of 2018

VAN DUNG NGUYEN

Applicant

And

**MINISTER FOR IMMIGRATION, CITIZENSHIP, MIGRANT
SERVICES AND MULTICULTURAL AFFAIRS**

First Respondent

ADMINISTRATIVE APPEALS TRIBUNAL

Second Respondent

REASONS FOR JUDGMENT

Introduction and background

1. The applicant, Mr Nguyen, seeks judicial review of a decision of the Administrative Appeals Tribunal (Tribunal) made on 18 July 2018. The Tribunal affirmed decisions of a delegate of the Minister (delegate) not to grant the visa applicants provisional partner visas. There were three visa applicants who were the wife and her two children. Mr Nguyen was the sponsor and the review applicant and is the applicant in these proceedings.
2. The following statement of background facts is derived from the submissions of the parties.

3. Mr Nguyen, an Australian citizen of Vietnamese heritage married Ms Thi Thuy Huyen Doan, a citizen of Vietnam in Hai Phong, northern Vietnam, on 1 April 2016.¹ Ms Doan is a female citizen of Vietnam who on 15 June 2016, applied for the grant of a partner (provisional) (Class UF) visa while she was offshore.²
4. The circumstances of their meeting, and the development of their relationship are set out in the statements of each of them at CB 88-93. In brief, they claim to have met in 2013 when Mr Nguyen, whilst on a visit to Vietnam, came into the pharmacy where Ms Doan was working to buy medicine. Mr Nguyen was then separated and awaiting his divorce and Ms Doan's husband was suffering from cancer, to which he was to succumb during the following year.
5. In 2015, after her husband passed away, Ms Doan accidentally discovered Mr Nguyen on Facebook and they made friends. When Mr Nguyen returned to Vietnam in 2015 they spent time together and got to know each other. They married at Ms Doan's sister's home on 1 April 2016 and her partner visa application (subclass 309) was lodged on 15 June 2016. The visa application included Ms Doan's natural son, and her adopted son. Mr Nguyen's father, Kim Oanh Ha, made a statutory declaration in which he told of his visit to Vietnam to visit Ms Doan's family and of his attendance at the wedding, and expressed his opinion that the marriage was genuine.³
6. The visa application was refused on 22 December 2016.⁴ The delegate found the visa applicant did not meet clause 309.211(2) and clause 309.221 as the delegate was not satisfied that she was the "spouse" of the sponsor. The application for review was lodged on behalf of Mr Nguyen.⁵
7. Mr Nguyen's solicitors lodged a considerable volume of supporting information and evidence. Amongst this were the following statutory declarations and statements:

¹ Court Book (CB) 23, 86-7

² CB 1-99

³ CB 94-95

⁴ CB 133-141

⁵ CB 144-146

- a) that of Thi Vang Vu, a friend of Ms Doan's mother, made on 21 April 2018.⁶ Ms Vu wrote that she had met the couple in Vietnam and socialised with them, and gives her opinion about the genuineness of their relationship based on her observations;
 - b) that of Minh Kha Doan, Ms Doan's sister, made on 21 April 2018,⁷ who gave an extensive description of her observations of and social interactions with the couple in Vietnam during Mr Nguyen's visit in 2015 and of the event's leading up to and including their wedding at her house in 2016;
 - c) that of Thi Kim Ahm Bui, Ms Doan's friend, dated 21 April 2018, who described her having met the couple in Vietnam and also described Ms Doan's feelings towards him as confided to her.⁸
8. Also included in the supporting materials were records of money transfers from Mr Nguyen to Ms Doan⁹ and many pages of records of telephone calls.
9. The Tribunal hearing was held on 1 May 2018.¹⁰ Mr Nguyen and Ms Doan gave evidence, as did Ms Nguyen's mother. A post hearing submission was lodged on 22 May 2018,¹¹ along with additional supporting evidence. The submission addressed:
- a) discrepancies in the estimates given by the parties and others of the number of guests at the wedding;
 - b) that Mr Nguyen had given evidence at hearing that he had purchased an investment property in Newcastle, whilst Ms Doan thought that it was in Sydney;
 - c) that Ms Doan had made herself available to give evidence whilst her son was ill with appendicitis.
10. On 3 July 2018, the Tribunal invited Mr Nguyen to comment or respond to information, pursuant to s.359A of the *Migration Act 1958*

⁶CB 171-2

⁷ CB 174-176

⁸ CB 179-180

⁹ CB 182-200, 204-210 and 404-408

¹⁰ CB 376

¹¹ CB 380

(Cth) (Migration Act).¹² The invitation indicated that Mr Nguyen's movement records suggested he travelled to Hong Kong on 4 May 2018 and returned to Australia on 6 May 2018, which contradicted his evidence at the hearing that he would be travelling to Vietnam from 6 to 13 May 2018 to support Ms Doan while her son was undergoing surgery.

11. On 12 July 2018, Mr Nguyen responded to the information stating that his leave had only been approved for two days, and that he could only book flights to Vietnam via Hong Kong.¹³ He provided an itinerary showing flights from Sydney to Hong Kong on 4 May 2018, from Hong Kong to Vietnam arriving at 9:35am on 5 May 2018, departing Vietnam at 7:55pm the same date, and arriving in Sydney via Hong Kong on 6 May 2018.

THE TRIBUNAL DECISION

12. On 18 July 2018, the Tribunal affirmed the delegate's decision on the basis that it was not satisfied that Ms Doan was the "spouse" of Mr Nguyen at the time of the application or the decision, as required by clause 309.211(2) and clause 309.221.
13. After canvassing the relevant law, the Tribunal purportedly addressed the matters it was required to address in regulation 1.15A(3) of the *Migration Regulations 1994* (Cth) (Regulations).

The financial aspects of the relationship

14. The Tribunal acknowledged at [13] that Mr Nguyen has sent remittances to the value of over \$15,000 to Ms Doan and that the parties had a reasonable knowledge of each other's finances. On the other hand, it noted the fact that Ms Doan's evidence was that Mr Nguyen's investment property was in Sydney rather than Newcastle,¹⁴ and expected that, whilst Ms Doan could not be expected to have a detailed knowledge of the geography of NSW she would be expected to know whether the investment property was inside or outside

¹² CB 551-552

¹³ CB 553-556

¹⁴ Ms Doan's evidence was in fact that her husband told her that the property was in Sydney (transcript annexed to the affidavit of Renee Quinn, page 27 A453).

Sydney.¹⁵ It was not satisfied that the financial aspects of the relationship supported the existence of a genuine relationship.¹⁶

The nature of the household

15. The Tribunal acknowledged that because the parties live in different countries there was no household as such, but it was concerned that in giving her evidence about “what sort of things did [your husband] help with in the organisation of the wedding?” Ms Doan did not immediately refer to wedding preparations they made together, but only referred to Mr Nguyen sending her money.¹⁷ It was also concerned that the parties were unable to give a clear and consistent picture of their time together in the lead up to their wedding.
16. It did not accept that the nature of the household supported the existence of a genuine relationship.

The social aspects of the relationship

17. The Tribunal referred at [27] to the supporting statement of Minh Kha Doan, Ms Doan’s brother, and Thi Kim Ahn Bui, her friend. It was concerned that some of the information in Mr Doan’s statement was inconsistent with Mr Nguyen’s evidence about the development of the relationship. This was because Mr Doan referred to the parties meeting in 2013, and that since that meeting they kept in touch by email, social media and telephone. That inconsistency, stated the Tribunal at [28], raised concerns regarding the relationship. The Tribunal stated, in its “overall assessment”:¹⁸

Whilst some written support was provided from friends and relatives and the review applicant’s mother provided oral evidence, the Tribunal considers this evidence was problematic and did not support a positive finding.

18. The Tribunal then moved to Mr Nguyen’s mother’s evidence at hearing and focused on her evidence that prior to the wedding she met Ms Doan’s parents,¹⁹ when her father was deceased. It was also concerned with the disparity in the estimates of the numbers of people at the

¹⁵CB 563 [15]-[16]

¹⁶CB 563 [17]

¹⁷CB 563 [20] referring to transcript, page 29 Q&A486

¹⁸CB 568 [51]

¹⁹CB 565 [31] referring to transcript, pages 30-31 A503 and following

wedding.²⁰ It was not satisfied as to the social aspects of the relationship given the limited evidence put forward and the inconsistencies in that evidence.²¹

19. The Tribunal at [53] then canvassed aspects of the evidence about the mutual commitment of the parties without, apparently coming to a conclusion that it was not satisfied that they have a mutual commitment to a shared life to the exclusion of all others, before moving to its overall assessment and concluding that clauses 309.211, 309.221 and 309.321 of Schedule 2 to the Regulations were not met.
20. The Tribunal, in its overall assessment, accepted the parties registered their marriage in Vietnam, that Mr Nguyen sent Ms Doan funds over the last few years, and that they had some knowledge of one another's jobs and income. However it found the evidence about the parties' household was very limited and not convincing, even taking into account that they lived in different countries. It found the written support from relatives and friends and Mr Nguyen's mother's oral evidence was problematic. It was concerned at [51] about the length of time (one week) the parties spent together prior to their decision to marry and was not convinced that they could have developed an understanding of one another to amount to a genuine and continuing relationship. While the Tribunal acknowledged at [52] a substantial amount of documentary evidence was presented with the application, it found that such documents and evidence could be obtained even if the relationship were not genuine and given its concerns, it found the written evidence was not convincing. The Tribunal found at [53]-[54] that given the limited involvement the parties had in one another's lives and the inconsistencies it identified in the course of the review, it was unable to be satisfied that the parties were in a spousal relationship. It found at [55] that Ms Doan did not meet clause 309.211 and/or clause 309.221 and that the secondary applicants did not meet clause 309.321.

²⁰CB 566-567 [33]-[36]

²¹CB 566 [39]

The current proceedings

21. These proceedings began with a show cause application filed on 27 August 2018. Mr Nguyen continues to rely upon that application. There are two grounds in that application:

1. *The Tribunal acted in breach of s.359A of the Migration Act.*

Particulars

(a) *Failure to disclose to the applicant, and to disclose in the way required by s.359A of the Migration Act, that the visa applicant, when asked about her husband's role in her wedding arrangements, did not immediately refer to wedding preparations that they made together, but only referred to the sponsor sending her money.*

2. *The Tribunal failed to make findings, as it was required to do pursuant to s.5F(3) of the Migration Act read with Migration Regulations 1.15A(2) and 1.15A(3) about the matters in Reg 1.15A(3)(c)(i), (ii) and (iii).*

22. In addition to the court book in two volumes lodged on 15 November 2018, I have before me as evidence the affidavit of Ms Quinn made on 9 October 2018, to which is annexed a transcript of a hearing conducted by the Tribunal on 1 May 2018.
23. Both Mr Nguyen and the Minister filed pre-hearing written submissions and made oral submissions through their counsel at the trial on 17 March 2020.

Consideration

Ground 1 – did the Tribunal breach s.359A of the Migration Act?

Mr Nguyen's contentions

24. Ms Doan's immediate response to the Tribunal's question of what sort of things did her husband do to help with in the organisation of the wedding, that he sent her money,²² is said to have been information that was part of the Tribunal's reasons for affirming the decision under review. Neither her statement to that effect, nor the reason that it was

²²CB 563 [20] referring to transcript, page 29 Q&A486

relevant to the review were disclosed to Mr Nguyen either orally or in writing.

25. Mr Nguyen submits that Ms Doan's response to the Tribunal's question, and its relevance to the review were required to be disclosed. First, the response is said to have been "information", in the sense of being evidentiary material. Secondly, so far as the Tribunal was concerned it is said not to go to credit. It is said to have gone directly to the genuineness of the relationship, in that it undermined the case put forward that the parties' relationship was based on mutual affection.²³ The clear implication from the Tribunal's reasoning was that so far as Ms Doan was concerned, money was of primary importance.
26. Thus, in Mr Nguyen's submission, Ms Doan's response to the Tribunal's question was required to be disclosed pursuant to s.359A of the Migration Act. He submits that the failure to disclose the information resulted in the Tribunal failing to complete the exercise of its jurisdiction.

Resolution

27. I accept the Minister's submissions in relation to the first ground.
28. The first ground claims the Tribunal failed to comply with s.359A of the Migration Act in relation to Mr Nguyen's evidence it notes at [20], being that he sent Ms Doan money from Australia to organise the wedding.²⁴ In no sense can that evidence be said "in its terms" to constitute a rejection, denial or undermining of Ms Doan's claims to the visa as required by *SZBYR*.²⁵ The fact that the Tribunal was concerned at [20] that Ms Doan did not immediately refer to the wedding preparations cannot have the effect of transforming her evidence into information falling within s.359A. This ground has no substance and fails.
29. The evidence given by Ms Doan said to be the foundation for this claim was neutral. The Tribunal, through its own thought process, drew a negative conclusion from what she failed to say. Neither that

²³ see *SZBYR v Minister for Immigration* (2007) 81 ALJR 1190 at [17]-[18]

²⁴ Transcript, page 29 Q486

²⁵ at [17]

gap in evidence, nor the Tribunal's own thought processes, amounted to "information" for the purposes of s.359A.

Ground 2 – did the Tribunal properly consider all of the matters specified under the Regulations?

Mr Nguyen's contentions

30. The Full Federal Court in *He v Minister for Immigration*,²⁶ stated the following about the requirements of regulation 1.15A(2) and (3):²⁷

In our opinion, the requirement that the Tribunal "consider" the circumstances in reg 1.15A(3) means that the Tribunal is required to make findings upon each of the prescribed matters numbered with Roman numerals. The nature of these specific matters is such that each of them poses, in effect, a question or questions for the Tribunal. For example, in respect of "the nature of the household", the Tribunal must ask:

- (i) whether there are children and whether there is any joint responsibility for their care and support;*
- (ii) what the living arrangements of the persons are; and*
- (iii) whether and to what extent there is sharing of the responsibility for housework.*

The regulation poses these questions in order to ensure that the Tribunal takes into account particular circumstances of the marriage as part of the active mental process involved in giving proper, genuine and realistic consideration to the prescribed matters. The legislative intention must be that these questions will be answered, not merely thought about. They must be answered so that the circumstances identified by the answers are included in the evaluation of whether there is a "married relationship". In some cases, the Tribunal's answer may be that there is no material, or insufficient material, to be able to form a conclusion on a prescribed matter: cf Paerau at [27], [69] and [119]. However, there must be an answer; or, in other words, a finding, even if the finding is that no conclusion can be reached upon the matter.

²⁶(2017) 255 FCR 41

²⁷ at [76]-[78]

So far, we have discussed the requirement for the Tribunal to make findings in respect of the specific matters in reg 1.15A(3) numbered with Roman numerals. It is also necessary to consider whether findings are required in respect of the principal matters in paras (a)-(d), namely the financial aspects of the relationship, the nature of the household, the social aspects of the relationship and the nature of the persons' commitment to each other. These matters are expressed broadly and it is less obvious that they pose questions that are required to be answered. Nevertheless, they should be seen as doing so, having regard to the questions that are then immediately posed in connection with each of the principal matters. In our opinion, the requirement to "consider" the principal matters means that a decision-maker must make findings upon each of them. In many cases, the requirement to make findings upon the principal matters may be satisfied by the course of making findings upon the specific matters. For example, the Tribunal may make a finding that the nature of the household is one where the parties have no children, they live together and they share responsibility for housework equally.

The conclusions we have reached are a function of the way in which reg 1.15A has been drafted. ...

31. Mr Nguyen submits that in the current case there was evidence by which the Tribunal could have reached conclusions on the matters required to be considered in regulations 1.15A(3)(i), (ii) and (iii) of the Regulations, those matters being;
 - a) whether the persons represent themselves to other people as being married to each other;
 - b) the opinion of the persons' friends and acquaintances about the nature of the relationship; and
 - c) any basis on which the persons plan and undertake joint social activities.
32. That evidence is said to have been in the statements and statutory declarations of Ms Nguyen's parents, and Ms Doan's friends and her brother. The Tribunal described this evidence as "problematic".²⁸ Whilst it may not have accepted parts of that evidence it did not reject all of it. The Tribunal thus failed to make findings on the available evidence that went to these matters, which in turn resulted on its failure

²⁸CB 568 [51]

to make findings on the matters themselves, and that amounted to jurisdictional error.

Minister's contentions

33. The second ground claims that the Tribunal was required to make findings about the matters in regulation 1.15A(3)(c)(i), (ii) and (iii) and did not do so, relying on *He*. That is said to be not a fair reading of the Tribunal's reasons, contrary to *Minister for Immigration v Wu Shan Liang*.²⁹ The Tribunal states it has considered the matters in regulation 1.15A(3)(c) at [26]. However it noted at [27]-[39] and [51] that there was limited evidence and inconsistencies in that evidence. The Minister submits that, on a fair reading, its conclusions at [39] and [51] indicate that at least implicitly it has found there was insufficient material for it to be satisfied of any of the matters in regulation 1.15A(3)(c). That is said to be sufficient to comply with *He*.³⁰

Resolution

34. Section 5F(3) of the Migration Act and regulations 1.15A(2) and (3) provide as follows:

35. Section 5F(3):

The regulations may make provision in relation to the determination of whether one or more of the conditions in paragraphs (2)(a), (b), (c) and (d) exist. The regulations may make different provision in relation to the determination for different purposes whether one or more of those conditions exist.

36. Regulation 1.115A:

(2) If the Minister is considering an application for:

- (a) a Partner (Migrant) (Class BC) visa; or*
- (b) a Partner (Provisional) (Class UF) visa; or*
- (c) a Partner (Residence) (Class BS) visa; or*
- (d) a Partner (Temporary) (Class UK) visa;*

²⁹ (1996) 185 CLR 259 at 271-272

³⁰ see *Campos v Minister for Immigration* [2019] FCA 1791 (McKerracher J) at [34]-[45]

the Minister must consider all of the circumstances of the relationship, including the matters set out in subregulation (3).

(3) The matters for subregulation (2) are:

(a) the financial aspects of the relationship, including:

(i) any joint ownership of real estate or other major assets; and

(ii) any joint liabilities; and

(iii) the extent of any pooling of financial resources, especially in relation to major financial commitments; and

(iv) whether one person in the relationship owes any legal obligation in respect of the other; and

(v) the basis of any sharing of day-to-day household expenses; and

(b) the nature of the household, including:

(i) any joint responsibility for the care and support of children; and

(ii) the living arrangements of the persons; and

(iii) any sharing of the responsibility for housework; and

(c) the social aspects of the relationship, including:

(i) whether the persons represent themselves to other people as being married to each other; and

(ii) the opinion of the persons' friends and acquaintances about the nature of the relationship; and

(iii) any basis on which the persons plan and undertake joint social activities; and

(d) the nature of the persons' commitment to each other, including:

(i) the duration of the relationship; and

- (ii) *the length of time during which the persons have lived together; and*
- (iii) *the degree of companionship and emotional support that the persons draw from each other; and*
- (iv) *whether the persons see the relationship as a long-term one.*

37. The Tribunal found Mr Nguyen was a 42 year old who had a previous marriage that ended in divorce in November 2013, and that he had one child from that marriage, aged 15. It found that Ms Doan was 28 years old, widowed in December 2014, and that she had two children, the older of whom was adopted from her sibling in 2015. Her children were born in 2001 and 2010.³¹ It had regard to the delegate's decision, a copy of which was provided to it by Mr Nguyen, and found that the parties met in September 2013 by chance when Mr Nguyen entered a pharmacy in which Ms Doan worked (in Vietnam), that Mr Nguyen returned to Australia in October 2013, they reconnected on Facebook in 2015 and began communicating after that. Mr Nguyen travelled to Vietnam in August 2015 for one week when they spent a few days together and Mr Nguyen returned to Vietnam in March 2017 for two weeks when they married.³²
38. The Tribunal had regard at [10] to the claim that their marriage was registered in Vietnam on 1 April 2016, and accepted the parties were validly married for the purposes of s.5F(2)(a) of the Migration Act.
39. In considering the financial aspects of the relationship,³³ the Tribunal found that the parties did not have a joint bank account or joint assets, but accepted at [12] that this was understandable as they lived in different countries. The Tribunal found at [13] that Mr Nguyen made remittances of over \$15,000 in the past few years, and found the parties demonstrated a reasonable knowledge of one another's employment and earnings. The Tribunal noted at [14]-[16] that the parties gave inconsistent evidence about whether Mr Nguyen owned property in Sydney or Newcastle and doubted the explanation that Ms Doan did not differentiate between Sydney and Newcastle. It found that overall

³¹CB 562 [8]

³²CB 562 [9]

³³regulation 1.15A(3)(a); CB 570

at [16] that the evidence about the parties' financial arrangements was limited and was not satisfied as to the financial aspects of the relationship.

40. Regarding the nature of the household,³⁴ the Tribunal found at [17] that relevantly to the living arrangements,³⁵ Mr Nguyen lived in Australia while Ms Doan lived in Vietnam. The Tribunal found at [19] that the parties did not presently have a joint household and assessed the nature of the household by reference to the limited time the parties spent together. The Tribunal had concerns at [20] that Ms Doan did not immediately refer to the wedding preparations they made together.
41. The Tribunal recorded at [22] that it put to Mr Nguyen, that Ms Doan provided a different response when asked about where Mr Nguyen stayed during his March 2016 visit and was concerned about the variation in the evidence. The Tribunal found it troubling that when questioned about Mr Nguyen's living arrangements in Australia, Ms Doan stated that she did not know whether her cousin, with whom Mr Nguyen was living in Australia, was married. It found at [23] this indicated the parties had not discussed elements of their household arrangements, and found this raised concerns about the genuineness of the relationship. The Tribunal found at [24] the parties inconsistent evidence about the two weeks together in preparation for the wedding, and Mr Nguyen's living arrangements raised concerns and did not accept at [25] the evidence supported Mr Nguyen's claims about the nature of their household.
42. In considering the social aspects of the relationship,³⁶ the Tribunal had regard to supporting statements from third parties. It had concerns that information in the statement from Mr Nguyen's brother contradicted Mr Nguyen's evidence about when the parties began communicating with one another on social media³⁷ and found the inconsistency raised concerns about the relationship at [28]. Having considered oral evidence from Mr Nguyen's mother, the Tribunal recorded that it put to Mr Nguyen its concerns that his mother did not know that Ms Doan's

³⁴regulation 1.15A(3)(b)

³⁵regulations 1.15A(3)(b)(ii) and 1.15A(3)(b)(iii)

³⁶regulation 1.15A(3)(c)

³⁷CB 564 [27]

father was deceased and found at [32] that this contradiction raised concerns about the genuineness of the relationship.

43. The Tribunal recorded that it put to Mr Nguyen the disparity in the evidence from the parties, Ms Doan's brother, and Mr Nguyen's mother, about the number of people at the wedding. Taking into account at [34] Mr Nguyen's and the representative's response at the hearing as well as a post-hearing written submission,³⁸ the Tribunal found at [36] that while it did not expect a precise number to be provided, the difference in the numbers varied in range between 50 per cent – 70 per cent, which raised concerns about the nature of the wedding and whether the relationship was genuine and continuing.
44. The Tribunal observed at [37] that Mr Nguyen's parents were also of Vietnamese heritage and it was plausible that they would have other reasons to visit Vietnam. The Tribunal did not consider the photographs provided of the wedding and other outings meant the parties were in a committed relationship, and observing that the same documentary evidence could be provided if a person wished to obtain evidence to convince the Minister's Department, it found at [38] the documentary evidence was not dispositive as to whether the parties were in a genuine relationship. It was not satisfied at [39] as to the social aspects of the relationship.
45. In considering the nature of the parties' commitment to one another,³⁹ the Tribunal had regard at [41] to the parties' evidence that they first met in 2013, and their relationship only developed two years later through electronic communication on Facebook. The Tribunal recorded at [42] that it put its concern to Mr Nguyen as to the little time the parties spent together, and that it put its concern to Ms Doan that it seemed surprising that Mr Nguyen proposed to her when they had known one another for a very short time. While it accepted the parties communicated by electronic means, it placed weight on the parties having spent a total of four weeks together since 2015, which raised concerns at [43] about whether the parties had a mutual commitment to a shared life and that the relationship was genuine and continuing.

³⁸CB 565 [35]

³⁹regulation 1.15A(3)(d)

46. In considering the degree of companionship and emotional support the parties drew from one another,⁴⁰ the Tribunal had regard at [45] to Mr Nguyen's evidence at the hearing that he planned to travel to Vietnam from 6 to 13 May 2018 to support Ms Doan while her son was undergoing surgery at the Hai Phong International Hospital. It took into account at [47]-[48] Mr Nguyen's response to the s.359A invitation, in which he claimed that as his leave was not approved, he revised his itinerary and travelled to Vietnam via Hong Kong from 4 to 6 May 2018. The Tribunal was prepared to accept Mr Nguyen's leave was not approved, that he departed Australia and that he travelled to Hanoi. It found that the revised itinerary indicated he spent approximately eight hours on the ground. The Tribunal checked Google maps and found at [49] that the driving time to Hai Phong International Hospital was between two to three hours in one direction. It found that while it was feasible that Mr Nguyen travelled to Hai Phong and returned to Hanoi for his flight later the same day, it found he would have spent less than a couple of hours there. The Tribunal found it difficult to understand what support he could have provided that could not have been done through a long phone or video call. It did not give significant weight to the evidence that Mr Nguyen flew out of Australia on 4 May and returned on 6 May 2018 to demonstrate a commitment to the visa applicant.⁴¹
47. In my view, the above discussion of the Tribunal's reasons demonstrates that it did adequately consider the matters specified in regulation 1.15A(3). It follows that I accept the Minister's submissions set out above at [33]. The second ground also fails.

Conclusion

48. Mr Nguyen has failed to establish that the decision of the Tribunal is affected by any jurisdictional error. The decision is therefore a privative clause decision and the application must be dismissed. I will so order.
49. The parties advised their submissions on costs prior to judgment, which are reflected in the costs order made.

⁴⁰regulation 1.15A(3)(d)(iii)

⁴¹CB 568 [50]

I certify that the preceding forty-nine (49) paragraphs are a true copy of the reasons for judgment of Judge Driver

Associate:

Date: 15 April 2020